

# **Bismarck Airport**

## **AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM**

### **49 CFR PART 23**

July 25, 2007  
Revised, August 30, 2010  
Revised October 1, 2013

## POLICY STATEMENT

### **Section 23.1, 23.23**

### **Objectives/Policy Statement**

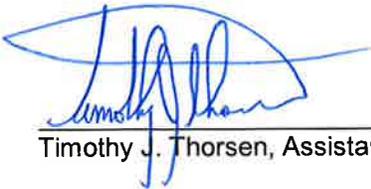
The City of Bismarck has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The City of Bismarck is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The City of Bismarck has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City of Bismarck to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at Bismarck Airport;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to Bismarck Airport in establishing and providing opportunities for ACDBEs.

Assistant Airport Director, Bismarck Airport, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Assistant Airport Director is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Bismarck in its financial assistance agreements with the Department of Transportation.

City of Bismarck has disseminated this policy statement to the Board of City Commissioners and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by posting on [bismarckairport.com](http://bismarckairport.com).



Timothy J. Thorsen, Assistant Airport Director

August 30, 2017  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 23.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 23.3 Definitions**

The City of Bismarck will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### **Section 23.5 Applicability**

The City of Bismarck is the owner of Bismarck Airport, a non-hub primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### **Section 23.9 Non-discrimination Requirements**

The City of Bismarck will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City of Bismarck will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The City of Bismarck acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The City of Bismarck will include the following assurances in all concession agreements and management contracts it executes with any firm after April 21, 2005:

- (1) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (2) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## **Section 23.11 Compliance and Enforcement**

The City of Bismarck will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101 and 26.105 through 26.107 and 2 CFR parts 180 and 1200).

The City of Bismarck will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

2 C.F.R. Part 180, Government-wide Debarment and Suspension (Non-procurement), effective November 15, 2006, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective June 2, 2008, provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement transactions, programs and activities. 2 C.F.R. Part 1200 adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by part 1200, as the Department of Transportation policies and procedures for non-procurement suspension and debarment.

The City of Bismarck compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The following enforcement actions apply to firms participating in the City of Bismarck's ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart C of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the City of Bismarck's ACDBE program or otherwise violates applicable Federal statutes.

**Compliance reviews:** The FAA may review the airport sponsor's compliance with this part at any time, including but not limited to, reviews of paperwork, on site reviews, and review of the airport sponsor's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the City of Bismarck may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

## **SUBPART B – ACDBE Programs**

### **Section 23.21 ACDBE Program Updates**

Since the City of Bismarck owns and operates a non-hub primary airport we are required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the City of Bismarck will submit its ACDBE program and overall goals to FAA according to the following schedule:

<b>Type of Airport</b>	<b>Initial Program and Goal Due</b>	<b>Second Goal Due</b>	<b>Subsequent Goals Due</b>
Non-hub Primary	October 1, 2007	October 1, 2010	Every 3 years on October 1

Until our new ACDBE program is submitted and approved we will continue to implement our concessions DBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at Bismarck Airport.

When City of Bismarck makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

### **Section 23.23 Administrative Provisions**

**Policy Statement:** The City of Bismarck is committed to operating its ACDBE program in a nondiscriminatory manner. The City of Bismarck's Policy Statement is elaborated on the first page of this program.

**ACDBE Liaison Officer (ACDBELO):** We have designated the following individual as our ACDBELO:

Timothy J. Thorsen, Assistant Airport Director  
PO Box 991  
Bismarck, ND 58502  
Phone: (701) 355-1808 Email: tthorsen@bismarcknd.gov

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the City of Bismarck complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the Airport Manager concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has assistance of a staff of up to three personnel to assist in the administration of the program. The duties and responsibilities include the following

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Sets overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes City of Bismarck's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Airport Manager and if needed, the Board of City Commissioner's, on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information and assistance in preparing bids; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Uniform Certification Program in North Dakota.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.
14. Maintains the UCP's updated directory on certified ACDBEs and DBEs.

**Directory:** The City of Bismarck through the North Dakota (North Dakota Department of Transportation) Uniform Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The UCP revises the Directory annually. We make the Directory available as follows: The Directory may be found in Attachment 2 to this program document.

### **Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs**

The City of Bismarck will take the following measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities (23.25(a): The Bismarck ACDBELO reviews bid proposal documents prior to advertising concessionaires and reviews results of bid/proposal process for concessions at the Bismarck Airport prior to award of the concession. Non discriminatory participation is also reviewed annually as part of the goal setting process.

The City of Bismarck will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The City of Bismarck's overall goal methodology, a description of the race-neutral measures it will take to meet the goals are described in Section 23.25 and Attachment 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the City of Bismarck projects that race-neutral measures, standing alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachment 4 and 5 of this plan. (23.25(e))

The City of Bismarck will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. We will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25 (f)(g))

### **Section 23.27 Reporting**

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23. We will submit the report to the FAA Regional Civil Rights Office via hard copy of the form.

### **Section 23.29 Compliance and Enforcement Procedures**

The City of Bismarck will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23. The ACDBE Program will be enforced through inclusion of specific provisions in contracts and enforcement under appropriate federal, state or local laws. If contract goals apply the ACDBELO will investigate and determine good faith efforts.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (see Attachment 3). (26.37)
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs. This mechanism will provide for a running tally of actual ACDBE attainments (e.g., payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. This will be accomplished by annual review by the ACDBELO (part of report, review and goal setting).
4. In our reports of ACDBE participation to FAA, we will show both commitments and attainments, as required by the DOT reporting form.

## **SUBPART C – CERTIFICATION AND ELIGIBILITY**

**Section 23.31** We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein. We are a member of a Unified Certification Program (UCP) administered by North Dakota Department of Transportation (NDDOT) which will make certification decisions on behalf of the City of Bismarck for ACDBEs.

The UCP's directory of eligible DBEs will specify whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23.)

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay telephone companies is 1500 employees and for ACDBE automobile dealers is 350 employees.

**Section 23.35** The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

We recognize that Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

- (1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual's equity in his or her primary place of residence; and
- (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. (23.3)

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program. (23.37).

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the

firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)).

We will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

## **SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 23.41 Basic Overall Goal Requirement**

City of Bismarck will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. The sponsor will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The sponsor's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

### **Section 23.43 Consultation in Goal Setting**

The sponsor consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged

businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

**Section 23.45 Overall Goals**

The City of Bismarck owns and operates Bismarck Airport which is a non-hub primary airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

Type of Airport	Goal Due	Next Goal Due	Subsequent Goals Due
Non-hub Primary	October 1, 2016	October 1, 2019	Every 3 years on October 1

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA.

The sponsor will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

The sponsor will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by ACDBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in *Attachment 4* to this program.

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in *Attachment 5* to this program.

**Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))**

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 & 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

**Concession Specific Goals (Also include this language in the DBE goal attachment) (23.25(c)(e)(1)(iv))**

The City of Bismarck will use concession specific goals to meet any portion of the overall goals City of Bismarck does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will

cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. *We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)).*

Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)

We need not establish a concession specific goal on every such concession, and the size of concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City of Bismarck will calculate the goal as a percentage of the total estimated annual gross receipts from the concession. (23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the City of Bismarck will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

#### **Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))**

To be eligible to be awarded a concession that has a concession specific goal, bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the City of Bismarck concession specific goals. Specifically,

##### Demonstration of good faith efforts (26.53(a) & (c))

The following personnel are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsible.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the concession agreement with the bidder/offeror.

##### Information to be submitted (26.53(b))

City of Bismarck treats bidder/offeror's compliance with good faith effort requirements as a matter of responsiveness.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 30 days of being informed by City of Bismarck that it is not responsive because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire should make this request in writing to the following reconsideration official, Airport Director Gregory B. Haug, PO Box 911, Bismarck, ND 58502, phone (701) 355-1808 or [ghaug@bismarcknd.gov](mailto:ghaug@bismarcknd.gov). The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the concessionaire a written decision on reconsideration, explaining the basis for finding that the concessionaire did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

City of Bismarck will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the concessionaire fails or refuses to comply in the time specified, the City of Bismarck may issue a termination for default proceeding.

Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Bismarck to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of \_\_ percent of

*(annual gross receipts; value of leases and/or purchases of goods and services)* has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

### **Section 23.53 Counting ACDBE Participation for Car Rental Goals**

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

### **Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals**

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

**Section 23.57 (b)** If the awards and commitments on our Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year

### **Section 23.61 Quotas or Set-asides**

We will not use quotas or set-asides as a means of obtaining ACDBE participation.

## **SUBPART E – OTHER PROVISIONS**

### **Section 23.71 Existing Agreements**

We will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. We will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

### **Section 23.73 Privately-Owned or Leased Terminal Buildings *(if applicable)***

We will pass through applicable provisions of part 23 to private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23.

### **Section 23.75 Long-Term Exclusive Agreements**

We will not enter into a long-term exclusive agreement for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a "long-term" agreement is one having a term of longer than 5 years. We understand that an "exclusive" agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

### **Section 23.79 Geographic Preferences**

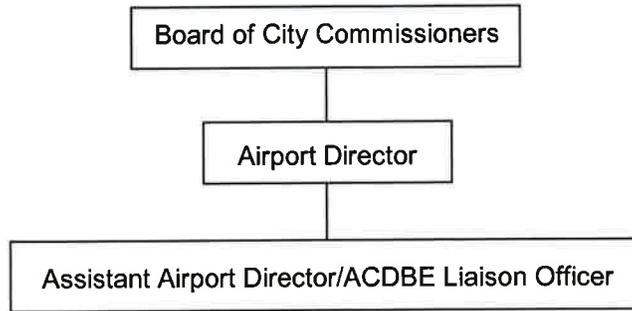
We will not use a "local geographic preference" i.e., any requirement that gives an ACDBE located in one place (e.g., *the local area*) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at Bismarck Airport.

## **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race- Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	Regulations: 49 CFR Part 23

**Attachment 1**

**Organizational Chart**



**Attachment 2**

**ACDBE Directory**

The ACDBE Directory is maintained by the North Dakota Department of Transportation (NDDOT) at the Unified Certification Program (UCP) for the State of North Dakota.

The Directory can be found at the NDDOT website: <http://www.dot.nd.gov/>. For questions about the Directory contact:

Amy Conklin, DBE Program Administrator  
Civil Rights Division  
Office of Executive Services  
North Dakota Department of Transportation  
608 E Boulevard  
Bismarck, ND 58505-0700  
Phone: 701-328-2563  
Email: [aconklin@nd.gov](mailto:aconklin@nd.gov)

**Attachment 2**

**ACDBE Directory**

The ACDBE Directory is maintained by the North Dakota Department of Transportation (NDDOT) at the Unified Certification Program (UCP) for the State of North Dakota.

The Directory can be found at the NDDOT website: <http://www.dot.nd.gov/>. For questions about the Directory contact:

Diane Laub, Director of Civil Rights  
Civil Rights Division  
Office of Executive Services  
North Dakota Department of Transportation  
608 E Boulevard  
Bismarck, ND 58505-0700  
Phone: 701-328-2576 Fax: 701-328-1965  
Email: [dlaub@nd.gov](mailto:dlaub@nd.gov)

### **Attachment 3**

#### **Sample Monitoring and Enforcement Mechanisms**

The City of Bismarck has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. The City of Bismarck also reserves the right to use any remedy under applicable local, state or federal law.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200.
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The City of Bismarck will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert provisions into concessions agreements and management contracts:
2. We will implement the following additional monitoring and compliance procedures:
  - A. Annual review and review at the time of contract award.
3. We will implement our compliance and monitoring procedures as follows:
  - A. Annual review by ACDBELO that may include reviews of records, on-site reviews of concession workplaces, etc.

## Attachment 4

### Section 23.45: Overall Goal Calculation for Concessions Other Than Car Rentals

#### Amount of Goal (submit if gross receipts exceed \$200,000)

The City of Bismarck's overall goal for concessions other than car rental during the period beginning October 1, 2016 and ending September 30, 2019 is the following: **75%** of the total gross receipts for concessions at Bismarck Airport to be accomplished through race conscious of **0%** and race neutral of **75%**.

The Bismarck Airport has determined the market area as follows:

#### Market Area for Non-Car Rental Concessionaires

<b>Company</b>	<b>Type of Concession</b>	<b>City</b>	<b>State</b>	<b>Nationwide</b>
Fly 'N Buy Cafe	Food/Alcohol/Gifts	Bismarck		
Corner Cafe	Coffee/Snack Kiosk	Bismarck		
Green Food 2 Go	Candy Vendor	Bismarck		
Lakeside Vending	Candy Vendor		ND	
Jamestown Music	ATM/Gaming Vendor		ND	
Soda Vending	Coke/Pepsi Vending		ND	
Clear Channel Airports	Airport Advertising			USA

There are two concession opportunities anticipated during the goal period. The terminal snack and beverage kiosk, Corner Café's contract ends March 31, 2018 and will be bid again at that time. The terminal restaurant, bar, and gift shop, Fly N' Buy Café's contract ends April 30, 2019 and will be bid again at that time.

#### Methodology used to Calculate Overall Goal

##### Goods and Services

We can meet the percentage goal by including the purchase from ACDBEs of goods and services used in businesses conducted at the airport. We, and the businesses at the airport, shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises. The dollar value from purchases of goods and services from ACDBEs may be added to the numerator, and the dollar value from purchases of goods and services from all firms (ACDBEs and non-ACDBEs) may be added to the denominator.

##### Management Contract or Subcontract

We can meet the percentage goal by including any business operated through a management contract or subcontract with an ACDBE. We, and the businesses at the airport, will add the dollar amount of a management contract or subcontract with an ACDBE to the total participation by ACDBEs in airport concessions (both the numerator AND the denominator) and to the base from which the airport's percentage goal is calculated. However, the dollar amount of a

management contract or subcontract with a non-ACDBE and the gross revenue of business activities to which the management contract or subcontract pertains will not be added to this base in either the numerator or denominator. While we realize that this appears to go against the normal rules and rationale for goal-setting, we understand that this method is nevertheless required by statute.

**Base of Goal**

The Bismarck Airport estimates that revenues to existing concessions will grow by 0% over the next three years due to inflation and increased passenger traffic or other reasons.

The following are not included in the total gross receipts for concessions: (a) the gross receipts of car rental operations, (b) the dollar amount of a management contract or subcontract with a non-ACDBE, (c) the gross receipts of business activities to which a management contract or subcontract with a non-ACDBE pertains, and (d) any portion of a firm's estimated gross receipts that will not be generated from a concession.

If a new concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the Bismarck Airport will submit to the FAA an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

**Step 1: 23.51(c)**

We determined the base figure for the relative availability of ACDBEs other than car rentals. The base figure was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able non-car rental ACDBEs in the market area}}{\text{All ready, willing and able non-car rental concession firms in the market area}}$$

The data source or demonstrable evidence used to derive the numerator was:

- ACDBE Directory – North Dakota Department of Transportation currently lists one Active Participant List – Lisa Gauerke Fly 'n Buy Café, LSCO LLC*

The data source or demonstrable evidence used to derive the denominator was:

- Active Participant List –*
  - 1. Fly 'n Buy Café, LSCO LLC Lisa Gauerke*
  - 2. Clear Channel Airports*
  - 3. Corner Café*
  - 4. Lakeside Vending*
  - 5. Jamestown Music*
  - 6. Green Food 2 Go*
  - 7. Soda Vending*

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for non-car rental concessions of: 14.3%

**Show the calculation here.**

$$1/7 = .143 \text{ base (14.3\%)}$$

**Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible, the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 60.7%. Our overall goal for non-car rental concessions is 75.0%

The data used to determine the adjustment to the base figure was:

**Past participation** – We evaluated the current capacity of ACDBEs to perform work in our concessions program by measuring the volume of work ACDBEs have performed in the past.

The reason we chose to adjust our step 2 figure as follows:

**Step 2: Past Participation**

The existing ACDBE, Fly'n Buy Café, LSCO LLC, Lisa Gauerke, became an ACDBE on February 24, 2010 and will continue as a qualified DBE during the three-year goal period. To calculate adjustment based on past experience we will take the average of the last three annual concession gross sales and divide by the average of the last three gross revenues of the single ACDBE at the Bismarck Airport. Actual DBE revenue for 2014-2016 was \$1,015,887.09 which is an average of the last three years. The revenue over the past years has varied somewhat. Other concession revenue is relatively stable. As a result, to account for that variation we will use the average of 2014-2016 figure of Fly'n Buy's concession revenue as the estimated annual DBE revenue and use the average of 2014-2016 figure for the total revenue as the estimated annual concession revenue to get the value \$1,199,669.45. This shows that the airport would be able to maintain 75%.

Calculation:

$$\frac{\$1,015,887.09 \text{ estimated annual DBE revenue (average FY 2014-2016)}}{\$1,199,669.45 \text{ estimated annual total concession revenue (average FY 2014-2016)}} = .8468 \approx 85\%$$

The step 1 goal is adjusted by increasing the goal to their amount that past experience would show as follows:

$$\begin{array}{r} 0.143 \\ + 0.707 \\ \hline 0.85 \text{ (85\%)} \end{array}$$

This adjusted goal does not appear to be realistically attainable because of the variability in non-car rental cumulative ACDBE. As a result, we will adjust the goal down by 10% to 75% as shown below:

0.143  
+ 0.607  
0.75(75%)

### **Consultation with Stakeholders (23.43)**

Prior to submitting this goal to the FAA, Bismarck Airport consulted with the following stakeholders:

*Fly 'n Buy Café, LSCO LLC Lisa Gauerke  
Clear Channel Airports  
Corner Café (Coffee Kiosk)  
Lakeside Vending*

*Jamestown Music  
Soda Vending  
Green Food 2 Go*

A summary of the information these stakeholders provided follows:

Clear Channel Airports: During a phone conversation with Thaddeus Glenn (610) 417-0605 on August 15, 2017, we talked about our proposed ACDBE goal and the methodology behind that goal. Thaddeus had no comments regarding the goal due to lack of contribution towards the proposed 75% DBE goal at Bismarck Airport. He stated that Clear Channel invested a lot of money into technology at our airport several years ago. By doing that, there wasn't a need to invest in anymore technology until they revamp their system, which is around once every 10 years. Thaddeus did state that their only contribution towards our DBE goal would be through the purchase of goods and services, and if an opportunity were to arise that they would consider. He also mentioned that he didn't see any projected uptick in growth in the near future with the airport. Clear Channel Airports is not a DBE.

Fly 'n Buy Café: (701) 471-9812 Fly 'n Buy is a single proprietor café/gift shop. The owner Lisa Gauerke became an ACDBE on February 24, 2010. On August 14, 2017 during conversation, with Lisa's brother Todd Tescher, who is an employee, he said they expect improving business. He said Fly'n Buy business has increased by an average of 10-12% since we last discussed the topic. After discussing the goal setting methodology, he said the method was reasonable. Todd also agreed that our goal of 75% was reasonable, stating that the business was unique being in the sterile area in that it was directly dependent on airline boarding's. He mentioned if airline boardings were flat or went down, the business would also be flat or go down. After speaking with Lisa on August 14, 2017, she stated that she agrees with Todd's comments regarding goal attainment. She also agreed with the possibility of variability in business due to flight schedule changes with her business being in the sterile area. Lisa also stated she plans to maintain her ACDBE status.

Corner Cafe: Corner Cafe is a Coffee Kiosk outside the passenger screening checkpoint. On August 14, 2017 we spoke with owner Henry Shiu (701)-226-6810 about the goal setting process and methodology. He stated that our goal of 75% makes sense to him, and that he hoped to have his business back open by the end of the week after construction kept him closed for several months. He hopes to be able to make at least \$3,000 a month in gross sales once he's established again, but said it's hard to project at the moment. Establishing clientele is going to be a challenge after being closed for an extended period of time. Henry stated that the airline flight schedule plays a big role on their business. Afternoon flights seem to be when he does better, rather than flights earlier in the day. He also said that he's looking at trying become a DBE by the end of the year, once he's opened back up and established.

Lakeside Vending: (Candy Machines) (888) 265-1317 Tim Alm during a phone conversation on August 14, 2017 said that he would love to participate but does not qualify for DBE status. The candy and toys he needs for vending machines is very specific and no DBE companies in North Dakota can accommodate. The companies he purchases from are big distributors on east coast and west coast who buy in bulk from overseas firms. Tim had no comment on the goal after discussing the methodology and process.

Jamestown Music: (Video Concession and ATMs) Cheryl and Richard Poehls (701) 251-2983 the video concession Jamestown Music continues on a month to month status. This video concession will remain month to month for the foreseeable future. The ATM agreement term lasts beyond the goal period. If this concession is competitively bid in the future, an RFP will be structured to invite MBE/WBE/DBE participation. It is not economically feasible to require DBE participation through sublease, joint venture or partnership due to the small size of this concession. This concession does not appear to represent a good opportunity for DBE participation due to the lack of availability of DBEs in this type of business in the local area. After a brief phone conversation on August 15, 2017, Richard Poehls, owner (701) 368-1385 of Jamestown Music explained that Jamestown music is not qualified to be an ACDBE. Richard did agree that the only way to participate would be to buy goods and services from a BDE. But there are not a lot of businesses providing equipment and supplies they need (none in ND). They purchase supplies for video games and ATMs from suppliers in Minneapolis, Mankato, and Des Moines. Richard did not comment on the ACDBE goal.

Green Food 2 Go: On August 14, 2017, we spoke with Green Food 2 Go owner, Paul Waletzko (701) 214-4795 about the DBE process and how we used our methodology to set the goal. He wasn't familiar with the process, so Tim Thorsen gave an in-depth explanation about DBE as a whole and why we follow the program. Tim explained that there currently very few options in the state to purchase goods and services from for his particular business. Tim did encourage Paul to research the North Dakota DOT website to see if there are any business's that would apply to Green Food 2 Go and use if possible. Paul indicated that they wouldn't be much of an impact for the airport, but is willing to try if there is something they could do to contribute. He stated that based on the given information, the goal of 75% is attainable. In an email back on August 16, 2017, Paul indicated that he reviewed the list and did not find any companies that he currently uses, nor any that they foresee being able to use in the future at this time.

Soda Vending: This directly negotiated agreement with two competing local vendors (Pepsi and Coca-Cola) began in 1999 when the lounge concession was disestablished. This concession does not represent a good opportunity due to the lack of DBE distributors in the local area. Neither Coca-Cola or the Pepsi Bottler can qualify as ACDBE. We were able to speak with Marquel Berger, Coca-Cola High Country Account Manager (701)-222-1200 ext. (3502) about the DBE process and methodology as it pertains to goal setting. She was not currently aware of any opportunities that would be applicable to their company in terms of purchasing goods and services from DBE's in the state. Marquel did not have a comment on the goal. Kevin Klemmer, the representative for Pepsi was not available for comment after three attempts of contact.

ND Aeronautics Commission: Jared Wingo, Airport Planner, ND Aeronautics Commission: Jared discussed the proposed ACDBE goals with Tim Thorsen on August 28, 2017. He stated that there were limited opportunities for ACDBE business in North Dakota. Jared said that he concurs with the goal setting methodology used by Bismarck.

ND DOT Office of Civil Rights: on August 29, 2017 Tim Thorsen talked with Amy Conklin, DBE Program Administrator (701)-328-2563. NDDOT is the Unified Certification Program (UCP) for the Bismarck Airport. Tim discussed the goal setting methodology for non-car rental ACDBE. She concurred with the goal setting methodology and step 2 reduction of the goal to 75%. She stated that Bismarck Airport should resubmit the goal if the single qualified ACDBE loses her qualification as a WBE. She commented that the Federal Highway Administration would have to change rules to directly accept UCP certificates from other states. NDDOT can't make those

changes by itself. She did comment that interstate certificates are simplified in North Dakota because a USDOT appeal resulted in NDDOT being required to accept interview results from other states. (additional interviews for interstate certifications were considered burdensome by USDOT).

**Breakout of Estimated Race-Neutral & Race Conscious Participation**  
**Section 23.51**

We estimate that, in meeting our overall goal of 75% we will obtain 75% from race-neutral participation and 0% through race-conscious measures.

City of Bismarck will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The City of Bismarck uses the following race-neutral measures to increase ACDBE participation. We understand that we will be expected to actually take these steps, and this is not merely a paper exercise.

1. *Advertising in the Bismarck Tribune and on the Airport web page to inform ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;*
5. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the sponsor's ACDBE program will affect the procurement process;*
6. *Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and*
7. *Work through the UCP (North Dakota Department of Transportation) to provide assistance program or taking other steps to foster ACDBE participation in concessions.*

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. *We will establish concession-specific goals for particular concession opportunities.*

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

We will advertise the goals in the Bismarck Tribune. The proposed goals are available for inspection Monday-Friday from 8:00 am to 5:00 pm at the Bismarck Airport Administration Office, 2301 University Drive, Bldg. #17, Suite 225B Bismarck ND. An explanation of goals is also available on the internet at <http://www.bismarckairport.com>, click on "Business Opportunities", then "Doing Business at the Airport". Comments will be accepted on the goals 45 days after the notice is published (until October 20, 2017). The goals will be submitted before the 45-day comment period is completed. If comments received justify a change, we will submit an amended goal.

**Attachment 5**

**Section 23.45: Overall Goal Calculation for Car Rentals**

**Amount of Goal**

Bismarck Airport's overall goal for car rentals during the period beginning October 1, 2016 and ending September 30, 2019 is the following: 1.00% of the total gross receipts of car rental operations at Bismarck Airport.

There are no concession opportunities anticipated during this goal period. If a new car rental concession opportunity arises prior to the end of this goal period and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, City of Bismarck will submit an appropriate adjustment to the overall goal. This will be submitted to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45(i)).

<b>Company</b>	<b>Type of Concession</b>	<b>City</b>	<b>State</b>	<b>Nationwide</b>
Hertz	Car Rental	Bismarck	ND	
Avis Rent-a-Car	Car Rental	Bismarck	ND	
Enterprise	Car Rental	Bismarck	ND	

**Methodology used to Calculate Overall Goal**

**Goods and Services**

We determined the goal based on outreach for the purchases of goods and services from certified ACDBE or potential/ACDBE firms. This basis is in lieu of a goal based upon a percentage of total gross receipts of car rental operations at the Airport. We will make a good faith effort to pursue opportunities to meet the goal. We will continue to consult with the North Dakota DOT UCP, our car rentals at the airport, airports in our region, minority and women businesses in the State and other publications to find prospects. We will work with our car rental agencies and outreach to ACDBEs for car rental goods and services and encourage certified ACDBEs to apply for certification in North Dakota so we can count the ACDBE participation in goals and uniform form reports. The North Dakota DOT UCP is aware of this requirement and is on board to assist and process certifications as required.

We have the following car rentals operating at the airport: Avis, Enterprise, and Hertz.

Car Rentals stated the services they may need are: oil change services, insurance, office supplies, cleaning supplies, tires, auto repair services, auto part supplies, towing services, and freight transportation.

**Step 1**

**Base of Goal**

To calculate the base of the goal, Bismarck Airport considered the previous 3 years of purchases and the projected potential purchases three years into the future.

### Car Rental Companies Goods and Services Purchases - previous 3 Years

<b>Fiscal Year</b>	<b>Car Rental Goods and Services Purchases (Expenditures)</b>
2014	1,254,571.85
2015	1,148,918.51
2016	1,325,786.65
<b>Total</b>	<b>3,729,277.01</b>
<b>Average</b>	<b>1,243,092.34</b>

The Bismarck Airport does not anticipate any major changes that would increase or decrease concession revenues over next three years. Therefore, the recipient's base of the goal is the average purchases of \$1,243,092.34

The average car rental goods and services purchases at the airport for the last three years was \$1,243,092.34. The anticipated car rental ACDBE purchases through outreach is \$4,900. To arrive at a Step 1 goal, we divided \$1,243,092.34 by \$4,900 which equals 0.394%.

#### **Step 2: 23.51(d)**

After calculating a base figure of the relative availability of ACDBEs, we examined evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible, the ACDBE participation we would expect in the absence of discrimination we have adjusted our base figure by 1.00%. Our overall goal for car rental concessions is 1.00%

The data used to determine the adjustment to the base figure was:

1. Past participation – We evaluated the current capacity of ACDBEs to perform work in our car rental concessions program by measuring the volume of work ACDBEs have performed in the past. The alternative of using estimated dollar value of purchases made by car rentals was considered.

The reason we chose to adjust our figure using this data was because:

**No car rental companies will qualify as ACDBE's. There are very few goods and services car rental companies can purchase that are available from NDDOT certified ACDBE's.**

### Consultation with Stakeholders (23.43)

Prior to submitting the 1.00% goal to the FAA, City of Bismarck consulted with the following stakeholders:

Comments were received from:

North Dakota DOT: Amy Conklin (701)-328-2563

North Dakota Aeronautics Commission: Jared Wingo (701) 328-9655

Enterprise Rent-a-Car: Julie McGrath (406) 443-6025

Avis Rent-a-Car: (5 Star Car Rental Inc.) Andrew Kuipers (605)393-8911

Avis Rent-a-Car: (Twin City Tire Company) Dan Haus (701) 255-2786

Hertz (Overland West, Inc.): Barbara Lam-Hales (801) 337-5236

Barbara Lam-Hales (Hertz) was contacted on August 25, 2017 (801-337-5236) and told us that most other airports have a goal set at one percent, but that number is almost never reached. She also said that she would provide a good faith efforts letter to the airport. Her other comment was that they should be able to use ACDBE's who are qualified by a UCP in another state. The ACDBE they currently use is only registered in 8 states.

On August 15, 2017, Andy Kuipers (Avis franchisee) responded to a request for comments regarding the DBE process and methodology. Andy currently doesn't show any purchases from a DBE that's North Dakota DOT certified. He did review the list on the DOT website to confirm that their company doesn't do business with any at the moment. He explained that it wasn't an issue of them willing to participate, it was the lack of providers to choose from that are certified in the state. Therefore, the 1% DBE goal would not be attainable. Andy also told us that he went as far as contacting a senator from South Dakota about the issue. He told the individual that if a business is a registered ACDBE in another state that they should be able to participate in every state. Not like the current rules which restrict companies from using certain DBE's solely because they aren't registered in the state they conduct business in.

On August 16, 2017, Dan Haas (Avis franchisee) responded via email about purchase and supply reports. Dan indicated that Avis had no DBE eligible purchases to date. His company was at the airport until June of 2017, when Andy Kuipers and 5-star car rental took over the Avis franchise. Dan did not have a comment on the goal.

Julie McGrath (Enterprise) emailed on August 15, 2017 and provided no comment on the DBE goal. Julie did provide us with a registered ACDBE that they do business with. They have found an inventory company that they purchase car cleaning products from that are currently registered with the North Dakota DOT. Julie was again contacted on August 25, 2017 (406-442-4669) and provided more information regarding their reported numbers. She said that they have a goal of one percent at most other airports they do business with, and that the goal used to be less than one percent.

On August 28, 2017 Tim Thorsen spoke with Jared Wingo, Airport Planner, ND Aeronautics Commission about the proposed DBE goals for car rental companies. He stated that there were limited opportunities for ACDBE business in North Dakota. Jared said that he concurs with the goal setting methodology used by Bismarck.

On August 29, 2017 Tim Thorsen talked with Amy Conklin, DBE Program Administrator (701)-328-2563. NDDOT is the Unified Certification Program (UCP) for the Bismarck Airport. Tim discussed the goal setting methodology for car rental ACDBE. She concurred with the goal setting methodology, but stated it did not make sense to her to raise the car rental goal to 1%. She commented that the Federal Highway Administration would have to change rules to directly accept UCP certificates from other states. NDDOT can't make those changes by itself. She did comment that interstate certificates are simplified in North Dakota because a USDOT appeal

resulted in NDDOT being required to accept interview results from other states. (additional interviews for interstate certifications were considered burdensome by USDOT).

**Breakout of Estimated Race-Neutral & Race Conscious Participation**  
**Section 23.51**

The Airport will make every reasonable effort to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating ACDBE participation. The Airport will use the following race-neutral measures to increase ACDBE participation:

- i. Locate and identify ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;
- ii. Notify ACDBEs of concession opportunities and encourage them to compete, when appropriate;
- iii. Provide information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

We estimate that, in meeting our overall goal of 1.00%, we will obtain 1.00% from race-neutral participation and 0% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation:

1. *See Step 2 of Goal Setting above and*

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. We will establish concession-specific goals for particular concession opportunities

In order to ensure that our ACDBE program will be narrowly tailored to overcome the effects of discrimination, if we use concession specific goals, we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual ACDBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral ACDBE participation includes, but is not necessarily limited to, the following: ACDBE participation through a prime contract that an ACDBE obtains through customary competitive procurement procedures; ACDBE participation through a subcontract on a prime contract that does not carry ACDBE goal; ACDBE participation on a prime contract exceeding a concession specific goal; and ACDBE participation through a subcontract from a prime contractor that did not consider a firm's ACDBE status in making the award.

We will maintain data separately on ACDBE achievements in those contracts with and without concession specific goals, respectively.

We will advertise the goals in the Bismarck Tribune. The proposed goals are available for inspection Monday-Friday from 8:00 am to 5:00 pm at the Bismarck Airport Administration Office, 2301 University Drive, Bldg. #17, Suite 225B Bismarck ND. An explanation of goals is also available on the internet at <http://www.bismarckairport.com>, click on "Business Opportunities", then "Doing Business at the Airport". Comments will be accepted on the goals 45 days after the notice is published (until October 20, 2017). The goals will be submitted before the 45-day comment period is completed. If comments received justify a change, we will submit an amended goal.

**Attachment 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

*[Forms 1 and 2 should be provided as part of the solicitation documents.]*

**FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % ACDBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the ACDBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_ % ACDBE utilization on this contract and submitted documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of ACDBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by ACDBE firm:

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The bidder/offeror is committed to utilizing the above-named ACDBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each ACDBE subcontractor.)

**Attachment 7**

**Certification Application Forms**

Available from North Dakota Department of Transportation, Civil Rights Division at:  
<http://www.dot.nd.gov/doing.html>

**Attachment 8**

**Procedures for Removal of ACDBEs Eligibility**

Available from North Dakota Department of Transportation, Civil Rights Division at:  
<http://www.dot.nd.gov/doing.html>

**Attachment 9**

**Regulations: 49 CFR Part 23**